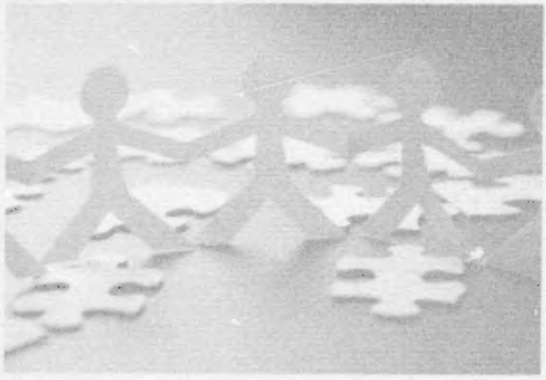
ANNUAL REPORT 2014

FAIR PRACTICES OFFICE

An independent office working to promote fair practices at the Workers' Compensation Board of Saskatchewan

CONTENTS

2014 ANNUAL REPORT



3 MESSAGE FROM THE FAIR PRACTICES OFFICER

4 OVERVIEW

8 FAIR PRACTICES ISSUES

14 COMPARATIVE STATISTICS

Fairness is:

Listening

Understanding

Timely answers

Reasons

Respect

MESSAGE FROM THE FAIR PRACTICES OFFICER

It is my privilege to present the 10th Annual Report of the Fair Practices Office (FPO) for the year ending December 31, 2014.

During 2014 we responded to 363 new complaints and reopened 24 previous complaints for a total of 387 calls or inquiries from individuals about WCB benefits and services. This is a 14.6 percent decrease from 2013 and a 17.3 percent decrease from our five-year average of 468 calls/inquiries.

The number of complaints per call is on the increase – when people call our office they often have a number of issues they wish to discuss. We first reported on this trend last year when we saw an average of 1.5 complaints per call, compared to 1.2 complaints per call in 2008. In 2014, this number rose to 1.6 complaints per call. Additionally, the complexity of the complaints has increased. Some of the specifics of this are reported on under categories of complaints (see Fair Practices Issues on page 8).

Over the last year, we provided information or clarification to callers to support the WCB's decisions on 250 of the calls we received, or 70 percent of the time. This number is down slightly from previous years, which was closer to an average of 75 percent. We also saw an increase in the number of recommendations our office made to the WCB management, up to 30.3 percent of the time versus 26.3 percent of the time in 2013.

We saw a significant increase in repeat callers, up to 25.3 percent of our calls, compared to 18.6 percent in 2013. We believe this means that the FPO was helpful in the past. Timeliness and process delays complaints also increased in 2014 to 13.3 percent, compared to 2013 at 11.7 percent of all complaints.

Our office also experienced timeliness issues last year. Our resolution rates or 'Response Time to Close' all saw a significant change in 2014. While we previously were able to attend to and close files within the first 30 days about 90 percent of the time, that number fell to 80 percent. And closing files after more than 30 days, increased from about 10 percent of the time to 20 percent of the time. This is partly due to the FPO internal activities, but more importantly due to management response to our calls and referrals. We also saw an increase with how often our office made referrals to the WCB that may also help to explain some of the delays.

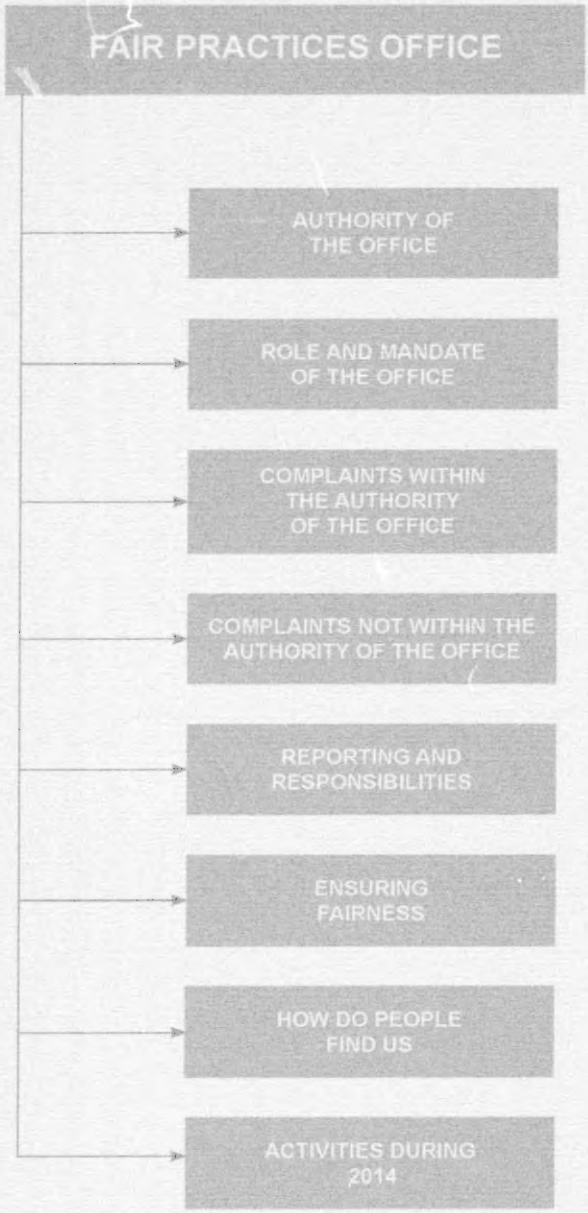
We continue to provide information both internally and externally about the services our office provides by attending internal staff meetings and hosting information tables. In 2014, we hosted information tables at three different events and presented information on our office's services.

Our office continues to enjoy productive and effective working relationships with the staff at the WCB. We support their dedicated efforts to provide fair, quality and timely services to our stakeholders.

I also wish to commend the Office's Intake and Inquiry Officer – I depend on her invaluable ability to ensure we continue to provide quality services to all our callers. I look forward to continuing to assist workers and employers in the coming year.

Dana Stutsky
Fair Practices Officer

OVERVIEW


FAIR PRACTICES OFFICE
AUTHORITY OF THE OFFICE
ROLE AND MANDATE OF THE OFFICE
COMPLAINTS WITHIN THE AUTHORITY OF THE OFFICE
COMPLAINTS NOT WITHIN THE AUTHORITY OF THE OFFICE
REPORTING AND RESPONSIBILITIES
ENSURING FAIRNESS
HOW DO PEOPLE FIND US
ACTIVITIES DURING 2014

Authority of the Office

The FPO opened in September 2003 on the recommendation of the 2001 WCB Act Committee of Review (COR). Their recommendation was based on the view that the WCB's legislation required that workers and their dependents be treated in a fair and reasonable manner.

The FPO's authority and its mandate were first established through a mandate statement provided by the WCB Board. The role and mandate of the FPO was more formally defined in policy in 2009 with amendments in 2010 and 2013.

When the WCB's new legislation took effect on January 1, 2014, the appointment of the Fair Practices Officer was enshrined in Section 186. The legislation and Policy 14/2013 confirm that the Fair Practices Officer is appointed pursuant to Sections 18(2) and (3) of the Act and has the power to conduct inquiries pursuant to Section 25(2). Policy 14/2013 is available in chapter 9.5 of the WCB's online policy manual (www.wcbsask.com).

Role and mandate of the Office

The Office has a mandate to:

- Receive, investigate and resolve complaints raised by workers, employers and external service providers about unfair practices in all areas of WCB service delivery.
- Identify complaint trends, policy matters and systemic issues and make recommendations for improvements.

If it is determined that an unfair practice has occurred, the FPO may seek to resolve the issue at the most appropriate administrative level of the WCB. If a remedy is not implemented, the FPO will raise the matter to senior management

The Fair Practices Office supports and complements the WCB's processes.

levels including the WCB'S Chief Executive Officer. Unresolved issues are reported to the Board. The FPO may, on her own initiative, investigate, identify and make recommendations on systemic issues. These are issues that affect more than one file and occur on an ongoing basis. Findings and recommendations initially are presented to senior administration within the WCB, including the Chief Executive Officer and then to the Board.

Complaints within the authority of the Office

The FPO has jurisdiction to investigate all areas of WCB service delivery including, but not limited to:

- Delays in adjudication, communication, referrals or payment;
- WCB staff conduct;
- Spoken and written communications;
- Implementation of appeal decisions;
- Employer services;
- Benefit payments; and
- Wrong application of policy.

Complaints not within the authority of the Office

A complaint is not within the jurisdiction of the Office if it is about:

- The conduct or a decision of the Board;
- Changes to the Act or its regulations;
- An issue outside of the jurisdiction of the WCB;
- An issue under appeal;
- An issue being handled by the Office of the Workers' Advocate, unless the Office of the Workers' Advocate requests that the FPO review the complaint; and
- An alleged illegal or fraudulent act. Allegations of this nature are referred to the investigative unit within the WCB's Internal Audit unit.

Reporting and responsibilities

The Fair Practices Office is a neutral, impartial, confidential and independent office of the WCB, working to promote fairness in the WCB's practices, procedures and processes. The Board has responsibility for the appointment of the FPO and oversight of the Fair Practices Office.

The FPO regularly reports to the Board, on average, about 10 times a year. The FPO provides the Board with statistical and anecdotal information to support the discharge of the Board's duties. Direct and independent information on operational performance supports achieving the Board's strategic objectives. The FPO keeps the Board informed of stakeholders' issues and concerns, monitors trends and systemic issues, and makes recommendations for improvements. Information also is provided to help assess the effectiveness of WCB policies, and to assist with the Board's role in the oversight of the WCB.

Working to ensure fair practices:

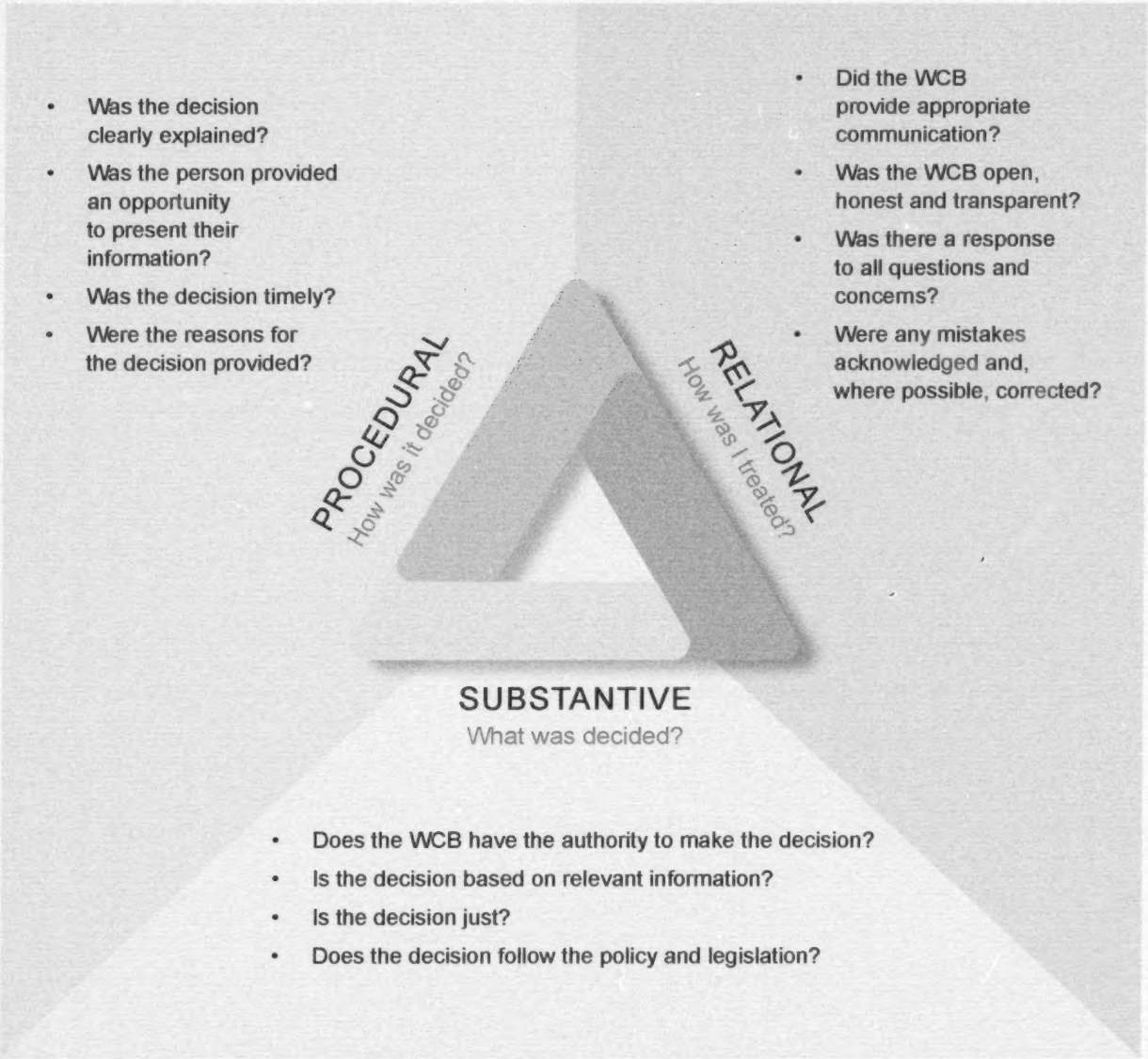
- Fair treatment
- Fair application of policy
- Neutral third party

Ensuring fairness

The Fair Practices Office looks at a three-part decision making process to ensure fairness. If one of the three parts fails, unfairness in the decision could be perceived.

Our Office models our service delivery on a design similar to that used by Ombudsman Saskatchewan. When we look at the question of fairness, we first look at the substantive perspective, or what was decided. Next, we look at how the decision was made. Most of the complaints raised with the FPO have a component of relational issues, or how the complainant feels they were treated. We consider those as well.

THE FAIRNESS TRIANGLE


• Was the decision clearly explained?
• Was the person provided an opportunity to present their information?
• Was the decision timely?
• Were the reasons for the decision provided?
PROCEDURAL
How was it decided?
• Did the WCB provide appropriate communication?
• Was the WCB open, honest and transparent?
• Was there a response to all questions and concerns?
• Were any mistakes acknowledged and, where possible, corrected?
RELATIONAL
How was I treated?
SUBSTANTIVE
What was decided?
• Does the WCB have the authority to make the decision?
• Is the decision based on relevant information?
• Is the decision just?
• Does the decision follow the policy and legislation?

Developed from the concept of the satisfaction triangle, in : Moore, Christopher (2003). *The Mediation Process: Practical Strategies for Resolving Conflicts (3rd ed.) San Francisco: Jossey-Bass Publishers.*

How do people find us?

During 2014, we continued to place a priority on making certain that the stakeholders who might benefit from our services are aware of us. This is done through internal and external communications, including information sessions and hosting information tables at events. We are available by telephone, letter or email and also can meet with complainants if needed. Contact information is on the WCB website at www.wcbsask.com and on the back cover of this report.

During the year we asked people how they learned about us. This is how they replied:

Previous inquiry with the FPO 25.3%
Self referral by injured worker 17.4%
WCB literature, including website 16.0%
Worker representative or family member 10.2%
Office of the Workers' Advocate 8.8%
WCB staff 7.4%
Provincial Ombudsman 6.3%
Employer or employer representative 3.3%
Medical services provider 2.5%
MLA offices or Minister's office 1.7%
Other 1.1%

Activities during 2014

Due to the nature of the work, we have a certain level of isolation and are exposed to ethical dilemmas where good judgment needs to be exercised on a regular basis. As a result, we need to keep abreast of developments in the workplace and obtain insight from peers. Additionally, self-reflection and evaluation are important as well as sometimes difficult. Professional development and interaction with peers are essential to maintaining a solid grounding.

- Attended and hosted information tables at:
  - Saskatchewan Association of Rural Municipalities Annual Convention
  - The WCB's Annual Compensation Institute
  - Saskatchewan Federation of Labour Annual Convention
- Participated in:
  - Saskatchewan Administrative Tribunal Association Lunch and Learn
  - Diversity Training hosted by the WCB
  - International Ombudsman Association Annual Convention
  - Foundations of Organizational Ombudsman course
  - The WCB's Annual Meeting and Vocational Rehabilitation Conference
  - Saskatchewan Administrative Tribunal Association Annual General Meeting
  - Association of Workers' Compensation Boards of Canada Learning Symposium
  - 'Essentials for Ombuds' Osgoode/FCO Certificate program through Osgoode Law School
  - Regular teleconference meetings with the Fairness Working Group (counterparts in other WCBs from British Columbia, Manitoba, Ontario and Nova Scotia)
- Presented information to:
  - Saskatchewan Federation of Labour's Annual Occupational Health and Safety Conference
- Maintained Membership with:
  - Forum of Canadian Ombudsman and International Ombudsman Association

Some of the typical complaints our clients share with us.

"My employer says they are accommodating my work injury but they really aren't."

"My case manager isn't calling me back."

"Why won't WCB pay for my medical treatment?"

"I haven't received my wage loss payment."

"My doctor and I disagree that I'm recovered."

"I disgree with the decision. How can I appeal?"

"My benefits have been suspended."

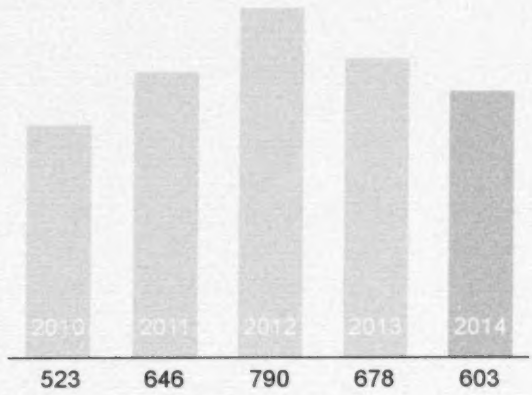
"Why was my wage loss payment reduced?"

"I disagree with the return-to-work plan."

"I can't afford to pay for my medication."

FAIR PRACTICES ISSUES

Injured workers, employers and other stakeholders involved in WCB services contact us with a variety of complaints and concerns. In 2014, 603 issues were raised.

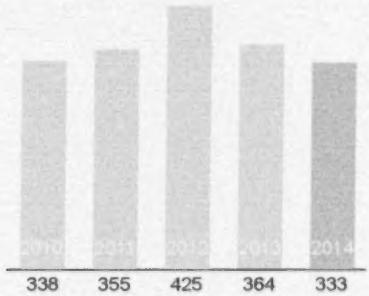


For reporting purposes, issues are grouped into five general categories:

1. Disagreement with decisions
2. Information requests
3. Timeliness and process delays
4. Communication/service issues
5. FPO issues (systemic)

DISAGREEMENT WITH DECISIONS

This category of complaint accounts for slightly more than half of all issues raised by workers and employers. In 2014, there were 333 complaints in this category out of 603 total complaints, or 52.9 percent of all complaints. This is similar to 2013 which had 53.7 percent complaints in this category.



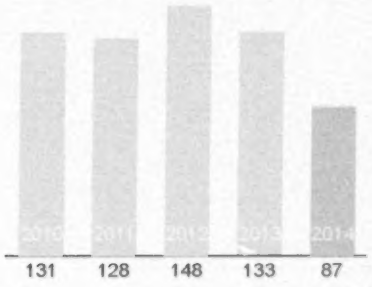
The following are examples of issues in this category:

- A worker called saying he disagreed with the amount of his wage loss benefits. He indicated he sustained an injury and was unable to work for several weeks. During this time he was paid wage loss, but he felt the rate he was paid was not reflective of his usual salary. A review by us revealed the worker's wage loss entitlements had been calculated on the basis of how many hours the employer said they "guaranteed" him each week. However, according to the policy wage loss benefits are to be based on the worker's "regular hours." Additional information was obtained from the employer about the worker's regular hours prior to his injury and as they were greater than the guarantee, additional benefits were paid to the worker.
- We received a call from an employer who was upset that he had been denied WCB coverage. He advised that he had applied and been denied three times and was at a loss as to what he needed to do. It appeared the employer was not aware of the requirements of the WCB as he was a resident of Alberta, his usual place of business. We were able to put him in touch with Employer Services who explained the process and assisted the employer with obtaining coverage.
- A worker called upset that his claim was ending in two weeks. He said he had a claim from about two years ago, had recently had surgery and was supposed to start therapy. We reviewed his claim and discovered that the worker's ongoing problems were not a result of the original work injury. Despite this, the WCB had continued to pay his claim although it appears that had been in error. Once the error was discovered, the worker was notified and had been provided four weeks notice that his claim was ending, as prescribed per policy. The worker decided he would appeal the decision with the help of the Office of the Workers' Advocate.
- A worker called as she disagreed that her wage loss benefits would be suspended because she was unable to have a CT scan due to her pregnancy. A review of the policy that applies indicates a pregnant worker is to have up to four weeks notice of a pending suspension after the birth of her child. As the worker was able to have the CT scan within the four-week notice period, she did not have an interruption of her benefits.

INFORMATION REQUESTS

Workers and employers call our office for information. We can provide additional information or a clearer explanation to callers about a variety of issues. We may provide information about the status of a claim, what policy or procedure may apply to their situation or perhaps answer a specific question about how the travel policy is applied in their situation or how their wage loss was calculated.

In 2014 we handled 87 information requests, down from previous years.



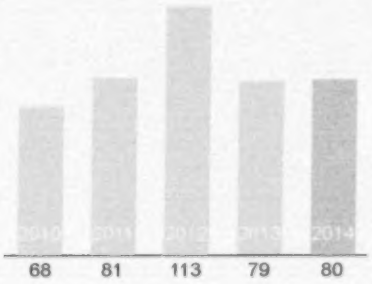
The following are examples of issues in this category:

- We received a call from an employer looking for information on coverage. The employer explained they recently had agreed to a student placement program that had Grades 11 and 12 students working in their workplace for 10 hours per week for four weeks. We provided information that a specific policy applied to that situation and we sent a copy of the policy to the employer.
- An employer representative called our office asking if there was any limit to the amount of money the WCB would pay for medical treatment in the US. They explained one of their injured workers was a resident of the US and returned home for treatment following his work injury. We were able to provide information to the caller about the procedure and process for the WCB to determine the extent of payment for treatment outside Saskatchewan.
- We received a call from a retired worker who indicated he developed hearing loss as a result of many years of working in the oil industry. He had questions about how he would file a claim and the information that may be required. We provided general information about the adjudication of hearing loss claims and directed him to the online policy and appropriate forms so he could proceed with filing his claim.
- A worker called with questions about his rights and responsibilities regarding an overpayment on his file. He explained the overpayment was due to a WCB error and he felt he shouldn't be responsible for repayment of the monies. The policy governing overpayments and collection of these monies was explained to the worker.
- A worker called to say she was told that the decision to accept her claim was under review. She questioned if the WCB could do that in the middle of the claim. The worker explained she had had two injuries years apart and now was told she required surgery. We provided the worker with information that the WCB was required to review her situation to determine if the need for surgery was a result of either of the work injuries.

TIMELINESS AND PROCESS DELAYS

In 2014, the WCB continued to experience service delays in the adjudication area. A concerted effort was made in the Operations division to reduce the delays and ensure there were appropriate resources and processes in place to maintain a timely adjudication of incoming claims. Initial delays can cause other issues, such as timely treatment and early return to work.

Overall, complaints in this area are on the increase as can be seen in the graph below.

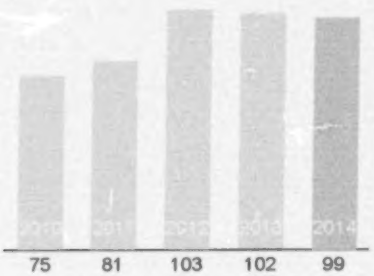


Some examples of issues in this category are as follows:

- An employer called with concerns that it took nine months for the WCB to decide on whether to accept the claim or not. She also indicated that, once it was accepted, it was for an injury that there was no medical information for. The employer intended to appeal the decision and had a copy of the file. She felt that there were many unexplained delays with the adjudication of the claim and no support for the decision that was made. We reviewed the file. We discovered there were delays with the decision on claim acceptance as the WCB had waited for additional medical information. The worker had had similar complaints prior to his injury. The WCB decided to wait for the additional medical information to identify if there was any additional injury or if the worker's complaints were a result of his prior condition. The employer decided to proceed to appeal, however continued to be unhappy about the WCB's delay.
- A worker called inquiring about the status of his claim. He indicated he had submitted a claim about two months earlier and there continued to be a delay with claim acceptance. He also indicated he had been two months without any salary or benefits and this had affected him financially. Our review determined there was a problem confirming that he was working for an employer with appropriate WCB coverage. We discussed this with Employer Services who confirmed this worker was working in an industry that had mandatory coverage. As a result, it was agreed that coverage would be provided and the WCB would sort out which employer account would be charged with the claim costs.
- A worker called with concerns that she had appealed a decision successfully and was still waiting for benefit payment several months later. We reviewed the issue and noted that the worker had two appeals decided in her favour, directing payment to be made. We raised this with the manager of the area. The manager agreed that the benefit payments needed to be made; however, there continued to be delays. After nine months following the appeals decision, the worker was paid. It took an additional six weeks for a letter explaining the calculations to be sent to the worker.

COMMUNICATION/ SERVICE ISSUES

Communication issues have been on the increase over the last few years. During 2014, complaints in this area represented 16.4 percent of total complaints, compared to 15.1 percent in 2013 and 13.1 percent in 2012. Communication issues typically can cause service issues that may impact claims processing negatively for both workers and employers. The FPO assists by ensuring that all parties have the tools and information needed for ongoing and appropriate communication. Often information needs to be gathered and exchanged.



The following are examples of these issues:

- A worker called saying she didn't think her wage loss benefit calculation was correct. She also disagreed with the amount of an overpayment as a result of a recalculation of her wage loss benefits. We reviewed her file and noted there were many wage loss calculations completed as the worker had returned to work at reduced hours and reduced duties and salary, while continuing with her treatment. We also noted that the information from the employer was contradictory and incomplete. The worker had not been provided with a written explanation of the calculations and the overpayment. We raised this with the manager of the area and, after much discussion over a few months, it was determined that most of the overpayment would be waived and a clear letter of explanation was provided to the worker.
- We received a call from a dependent spouse of a deceased worker. She explained she had been in receipt of benefits for a number of years, however felt that the benefit rate had unfairly decreased. In discussion with the spouse, it was determined she was in receipt of Canada Pension Plan (CPP) benefits from both her deceased husband's plan, as well as her own plan. When we reviewed the file, it was discovered that the WCB had reduced the benefit rate incorrectly by both the spouse's own CPP benefits, as well as her deceased husband's benefits. Once the spouse was able to confirm the amounts to the case manager, her benefit rate was recalculated and she was repaid the sum of $3,646.
- A worker called with concerns that the benefits on his claim had ended. He felt that the communication on his claim between himself and his case manager was inadequate and that his case manager was not listening to what he was saying. He explained that he had sustained an injury in 2010 and felt that he was still unable to work. We reviewed his file and determined that the medical information on the file did not support his contention that he was still suffering from the effects of the work injury. Further, it appeared that his ongoing problems were a result of a different medical condition, unrelated to the work injury. This was relayed to the worker. As he continued to disagree he was referred to the Office of the Workers' Advocate for possible assistance with an appeal.

FPO ISSUES

The Fair Practices Officer can initiate, investigate, identify and make recommendations on systemic issues that may affect a larger group of stakeholders. During 2014, four issues came forward that were investigated. This is in addition to responding to individual complaints or concerns raised by individual employers or workers.

One of the issues, the caution designation system, was first raised by our office in 2012. It again came forward as an issue. As was reported in the 2012 FPO Annual Report, a commitment was made by the WCB for the policy that governs this process to be updated. As that had not yet occurred, this issue was again raised and the policy is once again in process to be updated. Once the policy is updated, further staff training will occur. It is expected this will now be completed in 2015.

Our office maintains:

- Neutrality
- Confidentiality
- Impartiality
- Independence

More about the Fair Practices Office

We support the WCB's processes to provide timely and quality services.

We are advocates for fairness.

We provide timely, workable and reasonable solutions.

People contact the FPO because they want to articulate their concerns and connect with a human being.

We are a confidential resource.

We assist to clarify problems, identify issues and explore resolution.

We are independent of the WCB's management.

We consider many factors to determine if a decision or action is fair.

COMPARATIVE STATISTICS

for the calendar years 2010 through 2014

Number of Complaints / Inquiries Received

	2014	2013	2012	2011	2010
Complaints received	**363**	415	484	432	425
Re-opened	**24**	38	47	35	33
Total	**387**	453	531	467	458

Source of Complaints / Inquiries (%)

	2014	2013	2012	2011	2010
Injured workers	**92.3**	85.5	88.6	88.4	93.2
Employers	**6.7**	14.5	10.5	10.2	5.9
Other	**1.0**	0.0	0.9	1.4	0.9
Total	**100.0**	100.0	100.0	100.0	100.0

Category of Complaints / Inquiries*

	2014	2013	2012	2011	2010
Disagree with decision	**333**	364	425	355	338
Information requests	**87**	133	148	128	131
Timeliness & process delays	**80**	79	113	81	68
Communications/service issues	**99**	102	103	81	75
FPO issues (systemic)	**4**	0	1	1	1
Total	**603**	678	790	646	613

* More than one complaint can be registered per inquiry.

Resolution (closed files)

	2014	2013	2012	2011	2010
Completed by FPO without referral	**206**	265	284	243	262
Called WCB for clarification	**44**	41	76	52	52
Referred to WCB for review	**109**	109	123	133	111
Total	**359**	415	483	428	425

Note: Four files remained open at the end of 2014, one at the end of 2012 and four at the end of 2011.

Outcome of Referrals to WCB

	2014	2013	2012	2011	2010
Decision changed	**18**	16	20	28	20
New action taken	**87**	84	93	92	81
Reviewed – no change	**4**	9	10	13	10
Total	**109**	109	123	133	111

Response Time to Close (%)

	2014	2013	2012	2011	2010
0-7 days	**47.6**	74.4	72.9	73.1	71.5
8-30 days	**32.3**	15.2	17.8	17.8	19.1
Over 30 days	**20.1**	10.4	9.3	9.1	9.4
Total	**100.0**	100.0	100.0	100.0	100.0

Fair Practices Office
200 – 1881 Scarth Street
Regina, SK S4P 4L1

Phone: 306.787.8651
Toll-free phone: 1.888.787.8651
Toll-free fax: 1.866.787.6751
Email: fairpracticeoffice@wcbsask.com

wcb | Saskatchewan Workers' Compensation Board